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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,461	06/26/2003	Kevin O. Henderson	AVERP3302USB	3494
7590	01/12/2005		EXAMINER	
William C. Tritt Renner, Otto, Boisselle & Sklar, LLP Nineteenth Floor 1621 Euclid Avenue Cleveland, OH 44115			TARAZANO, DONALD LAWRENCE	
			ART UNIT	PAPER NUMBER
			1773	
DATE MAILED: 01/12/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/606,461	HENDERSON, KEVIN O.
	<b>Examiner</b>	<b>Art Unit</b>
	D. Lawrence Tarazano	1773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 14 October 2004.

2a)  This action is FINAL.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-40,43-45 and 47-62 is/are pending in the application.  
4a) Of the above claim(s) 3 is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1,2,4-40,43-45 and 47-62 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/5/4 10/2/3 10/2 .

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_ .

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claim 3 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/14/2004

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-7, 9, 11, 14 16, 17, 18, 22, 23, 26-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Vicik et al (4,188,250).

4. Vicik et al. teach a blend of polypropylene copolymer ( a propylene copolymer having an ethylene content of less than 6%) and ethylene propylene elastomers.

5. The polypropylene copolymer has a melt flow rate of 3.5 to 12 and the ethylene propylene elastomer has a melt flow rate of 27 (examples). The polymers are used to produce both monolayer (example 16) and multilayer films (others). The thickness of the films is within the claimed range.

6. The examiner notes that the applicants claim films that are transverse oriented. This does not preclude the films from being machine oriented also and is not interpreted to be the same as uniaxially oriented films.

7. Claims 1, 2, 4-11, 14-19, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Fujii et al (5,026,778).
8. The films contain a blend of polypropylene copolymer (PP-2) having a melt flow index of 7 g/10 minutes and ethylene-butene (EB-1) or ethylene propylene (EB-2) rubber (TAFMER). These films contain nucleating agents e.g. Example 11 and are used to produce oriented films.
- 9.
10. Claims 1, 2, 4-15, 17, 19,-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Kozimor et al. (6,231,936).
11. Kozimor et al teach blends of polypropylene copolymer, metallocene catalyzed polyethylene and nucleating agents. These blends are used to produce uniaxially oriented films.(column 4, lines 40-67), (column 9, lines 20-21).

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1; 2, 4-41, 43-45, 47-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuji et al. (5,026,778).
14. Fuji et al. teach blends as discussed above. These blends may be used in multilayer structures. While the applicants claim three layer structures there is nothing that differentiates

the components of the three layers and the core could comprise the same components as the surface layers. It appears on its face that a three-layer structure made from the polymers in question would meet the claims.

15. These structures are used in the production of container. The addition of an adhesive layer to either bond the films to another structure or to close the container would be well within the ordinary skill in the art.

16. The applicants have claims directed to metallocene-catalyzed polymers, but the prior art is silent regarding the use of metallocene-catalyzed materials. The TAFMER material, for example the ethylene-butene copolymer, a low-density plastomer. This material is not unlike a metallocene-catalyzed polyethylene, and it would have been obvious to one having ordinary skill in the art to have used a new generation metallocene catalyzed polyethylene in place of them. This would also be true for the polypropylene materials barring any showing of unexpected results.

17. Claims 1, 2, 4-41, 43-45, 47-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kozimor et al. (6,231,936).

18. As discussed above Kozimor et al. teach blends of polypropylene, metallocene catalyzed polyethylene and nucleating agents. These materials can be used in the production of multilayer article and single layer articles, in which the polymers may be uniaxially oriented.

19. It would have been obvious to one having ordinary skill in the art to have varied the thickness of the structures produced depending on the end use of the film.

20. While the applicants claim three layer structures there is nothing that differentiates the components of the three layers and the core could comprise the same components as the surface

layers. It appears on its face that a three-layer structure made from the polymers in question would meet the claims. Minor variations in the components would have been obvious based on the use of the film e.g. the use of slip agents, colorants, etc...

21. Since these structures are used for various applications, it would have been obvious to one having ordinary skill in the art to have used adhesives where necessary.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. Lawrence Tarazano whose telephone number is (571)-272-1515. The examiner can normally be reached on 8:30 to 6:00 (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah Jones can be reached on (571)-272-1535. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D. Lawrence Tarazano  
Primary Examiner  
Art Unit 1773

